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Via E-File

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Public Utilities Commission of Ohio
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Columbus, Ohio 43215

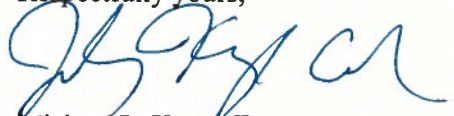
In re: Case Nos. 16-0395-EL-SSO, 16-0396-EL-ATA and 16-0397-EL-AAM

Dear Sir/Madam:

Please find attached the REPLY BRIEF OF THE OHIO ENERGY GROUP (OEG) e-filed today in the above-referenced matter.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,



Michael L. Kurtz, Esq.
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MLKkew

Encl.
Cc: Certificate of Service
Bryce McKenney, Attorney Examiner
Gregory Price, Attorney Examiner

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter Of The Application Of Dayton Power And Light Company For Approval of its Electric Security Plan.	:	Case No. 16-0395-EL-SSO
	:	
	:	
In The Matter Of The Application Of The Dayton Power And Light Company For Approval of Revised Tariffs.	:	Case No. 16-0396-EL-ATA
	:	
	:	
In The Matter Of The Application Of Dayton Power And Light Company For Approval Of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13.	:	Case No. 16-0397-EL-AAM
	:	

**REPLY BRIEF OF THE
THE OHIO ENERGY GROUP**

The Ohio Energy Group (“OEG”) submits this Reply Brief in support of its recommendations to the Commission. OEG’s decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

ARGUMENT

I. The Provisions of the Stipulation Addressing the Economic Development Rider are Reasonable.

Only two parties - The Office of the Ohio Consumers’ Counsel (“OCC”) and Wal-Mart Stores East, LP, and Sam’s East, Inc. (collectively, “Walmart”) - contest the provisions of the Stipulation modifying DP&L’s Economic Development Rider (“EDR”).¹ The first, OCC, speculates that the EDR provisions will not promote economic development in Ohio.² However, that theory ignores the sound logic behind adopting such economic development provisions. By offering businesses a rate credit based upon their energy usage once they achieve a certain level of demand, the EDR incentivizes those businesses to maintain or even to increase their energy usage

¹ Initial Post-Hearing Brief by the Office of the Ohio Consumers’ Counsel (“OCC Brief”); Wal-Mart Stores East, LP and Sam’s East, Inc.’s Post-Hearing Brief (“Walmart Brief”).

² OCC Brief at 39; Walmart Brief at 10.

(i.e. their manufacturing production) in order to benefit from the credit. For example, the Economic Improvement Incentive requires customers to have a demand of 10 MW or greater and an average load factor of at least 80%.³ That load factor requirement incentivizes businesses to run multiple shifts on a near continuous basis, which entails maintaining or increasing production and employment levels. If businesses maintain or increase their production and employment levels in order to secure the EDR rate credit, then the State economy will also benefit through tax revenues and employee spending on local businesses. The other proposed EDR incentives would operate similarly to facilitate Ohio's effectiveness in the global economy.

The Commission should also reject OCC's attempt to impose additional criteria upon economic development provisions appropriately adopted in the context of an ESP pursuant to 4928.143(B)(2)(ii),⁴ which is unfounded and which inappropriately seeks to rewrite the ESP statute.

Both OCC and Walmart take issue with the limited availability of the EDR provisions to only Signatory or Non-Opposing Parties. But provisions benefitting a limited number of parties are commonplace within settlements approved by the Commission, including one settlement that OCC recently joined.⁵ Moreover, the Commission has already dismissed allegations that settlement provisions benefitting certain parties constitute "favor trading" that would justify rejection of a proposed settlement, explaining:

With respect to the claims that the Stipulations represent mere "favor trading" and a lack of serious bargaining among the parties, the Commission notes that, while many signatory parties receive benefits under the Stipulations, we will not conclude that these benefits are the sole motivation of any party in supporting the Stipulations. We expect that parties to a stipulation will bargain in support of their own interests in deciding whether to support a stipulation. Further, we believe that parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any potential costs...Moreover, the Commission notes that nothing in the Stipulations can be construed to represent "favor trading" with Staff. Staff receives no benefits whatsoever under the Stipulations.⁶

OCC's claims of "favor trading" are therefore misplaced. Indeed, while many of the same economic development incentives provided for under the Stipulation were also available under the initial stipulation filed in these proceedings on January 30, 2017, OEG refused to sign on to that settlement because the overall package

³ Joint Ex. 1 at 9-10.

⁴ OCC Brief at 39 and 45-47.

⁵ Order on Global Settlement Stipulation, Case Nos. 10-2929-EL-UNC *et al.* (February 23, 2017) at 31-32.

⁶ Opinion and Order, Case No. 14-1297-EL-SSO (March 31, 2016) at 44.

was unreasonable. OEG only agreed to the Stipulation after Staff had negotiated significant improvements which benefited all customers. Hence, neither of the contesting parties presented a valid reason for the Commission to modify or reject the Stipulation based upon the EDR provisions contained therein.

II. The Commission Should Adopt the DMR Cost Allocation Set Forth in the Stipulation.

OCC asks the Commission to change the DMR cost allocation supported or not opposed by multiple parties in this proceeding (based 34% on demand, 33% on distribution revenue, and 33% on historical allocation of the currently charged non-bypassable rider) to an allocation that is more favorable for residential customers (based 50% on energy and 50% on demand).⁷ OCC claims that its preferred allocation better embodies the concept of cost causation.⁸ This argument ignores the stated purpose of the DMR, which is “*to provide stable and certain distribution service and to modernize [DP&L’s] distribution grid.*”⁹ Hence, if anything, the DMR should be allocated entirely on the basis of distribution revenues, which would impose much higher costs on residential customers than the stipulated cost allocation. Instead, for purposes of settlement, the parties agreed upon an allocation that strikes a reasonable balance among the various interests involved. While that allocation differs from the DMR allocation adopted for the FirstEnergy operating companies in Case No. 14-1297-EL-SSO (and still subject to rehearing), the circumstances of this case also differ since the allocation here was resolved through a multi-party settlement rather than litigation. Accordingly, the balance reflected in the stipulated DMR cost allocation should be maintained.

⁷ OCC Brief at 41-42.

⁸ Id. at 41.

⁹ Joint Ex. 1 at 3.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should approve the Stipulation without modification.

Respectfully submitted,



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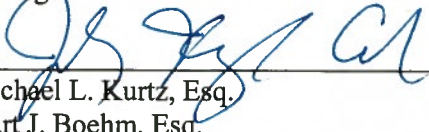
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May 15, 2017

COUNSEL FOR THE OHIO ENERGY GROUP

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or ordinary mail, unless otherwise noted, this 15th day of May, 2017 to the following:


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Summary: Brief Reply Brief of the Ohio Energy Group (OEG) electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group